

SELVARATNAM VELLUPILLAI

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v.

DR JAYABALAN KARRUPIAH

FEDERAL COURT, PUTRAJAYA

B

ZAKI TUN AZMI CJ

ABDUL AZIZ MOHAMAD FCJ

HASHIM YUSOFF FCJ

[CIVIL APPEAL NO: 02-1-2006(W)]

4 DECEMBER 2008

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LEGAL PROFESSION: *Professional discipline - Conviction of offence - Whether hearing unfairly conducted - Whether advocate & solicitor prejudiced - Disciplinary Committee report not signed by chairman - Errors in order issued by Disciplinary Board - Errors very obvious and patent - Advocate & solicitor not misled by errors - Oversight could be rectified - Order valid and enforceable*

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LEGAL PROFESSION: *Stakeholder - Sale and purchase agreement - Monies received by advocate & solicitor from purchaser and held for payment towards redemption of property from vendor's financier - Sale and purchase agreement not terminated - Whether advocate & solicitor holding monies as stakeholder - Whether advocate & solicitor may utilise such monies towards settlement of legal fees owed to him by purchaser arising from unrelated transactions*

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LEGAL PROFESSION: *Professional discipline - Suspension - Token period of suspension - Advocate & solicitor found guilty of misappropriating funds in client's account - Advocate & solicitor utilised stakeholder monies to set-off legal fees owed to him by one party arising from unrelated transactions - Advocate & solicitor had sought advice of Bar Council prior to the setting-off and Bar Council ignored him - Advocate & solicitor did what he thought was his right - Suspension of six months imposed by Disciplinary Board set aside and substituted with a token suspension of one month*

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TRUSTS: *Trust property - Stakeholder monies - Monies held by advocates & solicitors for benefit of purchaser and vendor in sale and purchase transaction - Monies held in trust for benefit of both parties - Advocate & solicitor cannot utilise such monies towards settlement of legal fees owed to him by purchaser arising from unrelated transactions*

I

- A The appellant (an advocate and solicitor) was referred to the Disciplinary Board under the Legal Profession Act 1976 on complaint against him of using client's money wrongfully. He had acted as solicitor in a Sale and Purchase Agreement ("the SPA") entered into between the respondent as purchaser and the
- B vendors in respect of a purchase of a house for RM80,000. The respondent, paid an advance of RM40,000 on execution of the SPA. The balance of RM40,000, when paid, was to be utilised by the vendors towards redemption of their housing loan. The Respondent paid a further sum of RM21,223.83 to the appellant
- C to be used towards payment of the redemption sum. Since the redemption amount was RM41,896.52, and since only RM40,000 was payable by the respondent, there was a shortfall of RM1,896.52 which the vendors had to pay. The vendors failed to pay this sum of RM1,896.52. One year later, the appellant wrote
- D to the respondent to discharge himself from acting for the respondent. At the same time, the respondent was owing to the appellant a sum of money for fees and disbursements relating to other matters in which the appellant had been acting for the respondent. The appellant wrote to the Bar Council seeking
- E advice as to whether he had the right to set off the sum held by him on behalf of the respondent towards settlement of monies due to him from the respondent. The Bar Council however never gave any advice. The appellant then utilised the amount of RM21,223.83 towards settlement of these fees and disbursements.
- F The respondent complained to the Bar Council that the appellant had misappropriated the funds in the client's account. The appellant was found guilty by the Disciplinary Board and ordered to be suspended for six months. He failed in his appeal to the High Court and appealed to the Federal Court. The appellant,
- G inter alia, raised the following issued: (i) that the report and recommendation of the Disciplinary Committee to the Disciplinary Board was not signed by the chairman of the Committee; (ii) that the order issued by the Disciplinary Board was a nullity because it contained errors; (iii) that pursuant to r. 7 of the Solicitors' Account Rules 1990, monies in client's account could be used for
- H payment of solicitor's costs; and (iv) that until the appellant received the full amount, he was not deemed to be a stakeholder.

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Held (dismissing the appeal)

A

Per Zaki Tun Azmi CJ delivering the majority judgment of the court:

- (1) At the Disciplinary Committee hearing there was no complaint by the appellant that he had been prejudiced or that the hearing was unfairly conducted against him. The fact that the signature of the chairman of the Disciplinary Committee did not appear on the report was pure oversight. The errors appearing on the face of the documents were very obvious and patent. The appellant was not misled in any way by those errors. This oversight could be and was subsequently rectified. The errors committed by the Disciplinary Board also cannot however make the orders issued by it void and unenforceable. (paras 21 & 22) B C
- (2) The appellant as a stakeholder was duty bound to hold the sum for the purpose of redemption. It was not available to him for as long as the SPA remained alive. He was to hold it for the benefit of both parties to the SPA, that is the respondent as well as the vendors. He had no authority to utilise the sum for payment of his bills. The SPA had not been terminated. (paras 28 & 30) D E
- (3) The major distinction between just money in the client's account and money held in trust is that money held in trust does not belong to the client. It is to be held by the solicitors for the benefit of other parties as well. (para 39) F
- (4) Once a solicitor holds money in trust for his client or any other party for a purpose, it does not matter whether the amount is sufficient to be utilized for that purpose. The money remains to be in trust. (para 41) G
- (5) Since the appellant had sought the advice of the Bar Council and the Bar Council ignored him, he did what he thought was his right. As such, the order of suspension of six months was set aside and substituted with a token suspension of one month. (paras 45 & 46) H

Per Abdul Aziz Mohamad FCJ (dissenting):

- (1) This was not a case of stakeholding. In a stakeholding in vendor and purchaser cases, the sum in question is a stake held by the stakeholder pending the outcome of a future event, and, according as to what the outcome is, the money I

- A then becomes available to either the purchaser or the vendor. Stakeholding is a wager situation. In this case the appellant would not have held the redemption sum pending the outcome of a future event. There was no future event to await the outcome of and the sum would not be awaiting any outcome
- B of any future event to be paid to either the vendors or the respondent. The sum was simply and inevitably to be paid to the government. It was not a stake. (para 73)
- (2) June was the last month for which the redemption sum was
- C certified. The appellant's obligation to treat the sum of RM21,223.83 as meant for redemption of the charge ceased no later than the end of June 1998. After that he was entitled to draw that sum from the client account under r. 7(a)(v) of the Solicitors' Account Rules 1990, the sum being always the
- D respondent's money, and never stake money. (para 74)

Bahasa Malaysia Translation Of Headnotes

- Perayu, seorang peguambela dan peguamcara, telah dirujuk ke Lembaga Disiplin di bawah Akta Profesion Undang-Undang 1976
- E atas aduan bahawa beliau telah menyalahgunakan wang kliennya. Perayu bertindak sebagai peguamcara dalam satu Perjanjian Jual Beli ("SPA") yang dimeterai di antara responden selaku pembeli dan penjual-penjual berkaitan pembelian sebuah rumah berharga RM80,000. Responden telah membayar wang pendahuluan
- F sebanyak RM40,000 semasa menandatangani SPA. Baki RM40,000, apabila dibayar, harus digunakan oleh penjual-penjual untuk menebus pinjaman perumahan mereka. Responden kemudian membayar RM21,223.83 kepada perayu sebagai sebahagian
- G bayaran penebusan tersebut. Oleh kerana jumlah penebusan adalah RM41,896.52, maka, ditolak jumlah RM40,000 yang akan dibayar oleh responden, terdapat kekurangan sebanyak RM1,896.52 yang mana perlu dibayar oleh penjual-penjual. Penjual-penjual bagaimanapun gagal membayar jumlah RM1,896.52 ini. Setahun kemudian, perayu menulis kepada responden bagi menarik diri dari
- H mewakili responden. Pada masa yang sama, responden juga berhutang kepada perayu sejumlah fee dan disbursemen berkaitan perkara-perkara lain di mana perayu bertindak mewakili responden. Perayu menulis kepada Majlis Peguam meminta nasihat sama ada beliau berhak menolak (set off) jumlah yang dipegang olehnya bagi
- I pihak responden sebagai penyelesaian hutang responden kepadanya. Majlis Peguam bagaimanapun tidak memberi sebarang nasihat. Perayu kemudian menggunakan jumlah RM21,223.83 bagi

menyelesaikan fee-fee dan disbursemenya di atas. Akibatnya responden mengadu kepada Majlis Peguam bahawa perayu telah menyalahguna wang di dalam akaun klien. Berikutnya, perayu didapati bersalah oleh Lembaga Disiplin dan diperintahkan digantung selama enam bulan. Perayu gagal dalam rayuan ke Mahkamah Tinggi dan dengan itu telah merayu ke Mahkamah Persekutuan. Antara lain, perayu membangkitkan isu-isu berikut: (i) bahawa laporan dan syor Jawatankuasa Disiplin kepada Lembaga Disiplin tidak ditandatangani oleh Pengerusi Jawatankuasa; (ii) bahawa perintah yang dikeluarkan oleh Lembaga Disiplin adalah satu nullity kerana mengandungi beberapa kesilapan; (iii) bahawa berdasarkan k. 7 Kaedah-kaedah Akaun Peguamcara 1990, wang di dalam akaun klien boleh digunakan untuk membayar kos peguamcara; dan (iv) bahawa sehingga perayu menerima jumlah penuh, beliau tidak boleh dianggap sebagai stakeholder.

Diputuskan (menolak rayuan)

Oleh Zaki Tun Azmi KHN menyampaikan penghakiman majoriti:

- (1) Di pendengaran di hadapan Jawatankuasa Disiplin tidak terdapat rungutan oleh perayu bahawa beliau telah diprejudis atau bahawa pendengaran tidak dijalankan secara adil terhadapnya. Fakta bahawa tandatangan Pengerusi Jawatankuasa tidak wujud di dalam laporan hanyalah satu ketidaksengajaan. Kesilapan-kesilapan yang wujud pada permukaan dokumen adalah ketara dan terbuka dan sekali-kali tidak mengelirukan perayu. Kekhilafan-kekhilafan ini boleh dan telahpun dibetulkan kemudiannya. Apapun, kekhilafan-kekhilafan yang dibuat Lembaga Disiplin juga tidak menjadikan perintah-perintah yang dikeluarkan olehnya batal atau tidak boleh dilaksanakan.
- (2) Perayu selaku seorang stakeholder bertanggung untuk memegang wang berkenaan untuk tujuan penebusan. Wang itu tidak boleh digunakan untuk dirinya selagi SPA masih berkuatkuasa. Beliau harus memegangnya untuk manfaat kedua-dua pihak kepada SPA, iaitu responden dan juga penjual-penjual. Beliau tidak mempunyai autoriti untuk menggunakan jumlah itu untuk membayar bil-bil peribadinya. SPA masih belum ditamatkan.

- A (3) Perbezaan besar di antara wang biasa di dalam akaun klien dan wang yang dipegang secara amanah ialah wang yang dipegang secara amanah tidak dimiliki oleh klien. Ianya dipegang oleh peguamcara untuk manfaat pihak-pihak lain juga.
- B (4) Sebaik sahaja seorang peguamcara memegang wang sebagai amanah untuk kliennya atau untuk mana-mana pihak bagi sesuatu tujuan, maka soal wang itu mencukupi untuk digunakan untuk tujuan tersebut tidak berbangkit. Wang tersebut tetap merupakan wang amanah.
- C (5) Oleh kerana perayu telah meminta nasihat Majlis Peguam dan Majlis Peguam telah tidak mengendakkannya, beliau telah melakukan apa yang difikirkannya betul. Oleh itu, perintah penggantungan enam bulan diketepikan dan diganti dengan penggantungan sebulan sebagai pengajaran.
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Oleh Abdul Aziz Mohamad HMP (menentang):

- E (1) Ini bukan suatu kes stakeholding. Dalam suatu kes stakeholding yang melibatkan penjual dan pembeli, jumlah wang adalah merupakan stake yang dipegang oleh stakeholder sementara menunggu keputusan sesuatu peristiwa masa hadapan, dan, bergantung kepada apakah keputusan itu kelak, wang akan diagihkan sama ada kepada pembeli atau penjual. Stakeholding membabitkan satu situasi yang tidak pasti. Dalam kes semasa, perayu tidak memegang wang penebusan sementara menunggu suatu keputusan peristiwa masa hadapan. Tidak terdapat apa-apa peristiwa masa hadapan untuk ditunggukan keputusannya, dan wang tidak menunggu keputusan sedemikian untuk diagihkan kepada pembeli ataupun penjual. Wang di sini secara jelas dan khusus adalah untuk dibayar kepada Kerajaan. Ia bukan suatu stake.
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- G
- H (2) Jun adalah bulan terakhir di mana wang penebusan disahkan. Tanggungjawab perayu untuk menganggap wang RM21,223.83 sebagai dimaksud untuk menebus gadaian berakhir sebaik berakhirnya bulan Jun 1998. Selepas tarikh itu beliau berhak untuk mengeluarkan jumlah tersebut dari akaun klien di bawah k. 7(a)(v) Kaedah-Kaedah Akaun Peguamcara 1990, kerana wang adalah di sepanjang masa merupakan wang responden dan tidak pernah menjadi stake money.
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Case(s) referred to:

Burt v. Claude Cousins & Co Ltd [1971] 2 QB 426 (*refd*)

Lee Yoke Chye v. Toh Theam Hock & Co [1986] 2 CLJ 423; [1986] CLJ (Rep) 175 SC (*refd*)

Maloney v. Hardy [1970] 216 EG 1582 (*refd*)

Toh Theam Hock v. Kemajuan Perwira Management Corp Sdn Bhd [1987] 2 CLJ 26; [1987] CLJ (Rep) 400 SC (*refd*)

Vije & Co v. The Co-Operative Central Bank Ltd [1991] 2 CLJ 1403; [1991] 4 CLJ (Rep) 188 HC (*refd*)

Legislation referred to:

Legal Profession Act 1976, ss. 94(3)(d), (n), (o), 103C(1)(c), 103D, 103E, 126(1)

Legal Profession (Amendment) Act 2006, s. 35

Solicitors' Account Rules 1990, rr. 2, 7(a)(v), (6), 17

For the appellant - VS Viswanathan; M/s VS Viswa & Co

For the respondent - Thiru Mangai Krishnan; M/s Jeyaratnam & Co

For the Bar Council - Balan Nair; M/s Seah Balan Ravi & Co

[Appeal from High Court, Ipoh; Civil Appeal No: 17-17-2003]

Reported by Amutha Suppayah

JUDGMENT**Zaki Tun Azmi CJ:**

[1] The appellant is an advocate and solicitor of the High Court of Malaya practising under the name of Messrs. V. Selva & Associates. There was referred to the disciplinary board under the Legal Profession Act 1976 (Act 166) a complaint against him of using client's money wrongfully. He had acted as solicitor in a sale and purchase agreement entered into between the respondent and a pair of husband-and-wife government servants in respect of a purchase of a single storey terrace house. The money that he was alleged to have wrongfully used was part of the purchase price which the respondent had paid him for payment to the vendors as settlement of part of the purchase price.

[2] He was found guilty by the disciplinary board and ordered to be suspended for six months. He failed in his appeal to the High Court. The High Court consisted of three judges empanelled pursuant to s. 103E of the Legal Profession Act 1976. He now

- A appeals to this court pursuant to the same section. By virtue of s. 35 of the Legal Profession (Amendment) Act 2006, s. 103E and all other provisions prior to the amendment apply to him.

Facts Leading To Disciplinary Action

- B [3] The price of the property sold was RM80,000. The purchaser, that is the respondent, paid an advance of RM40,000 on execution of the sale and purchase agreement. The balance of RM40,000, when paid, was to be utilised by the vendors towards redemption of a housing loan from Ministry of Finance Incorporation Malaysia ("MOF Inc."). The loan was taken by the couple from MOF Inc. since they were government servants. According to the statement of account from MOF Inc., as on 30 March 1998 the redemption amount would be RM41,896.52. Therefore, less the amount of RM40,000 to be paid by the Respondent, there would remain a shortfall of RM1,896.52 which the vendors had to pay.

- E [4] The sale and purchase agreement was entered into on 8 December 1997. On 7 January 1998, about two months later, the respondent paid a further sum of RM21,223.83. This payment was clearly indicated on the receipt issued by the appellant as "payment of redemption sum for Mr. Nadarajah a/l Velu", one of the vendors. On 26 February 1998 the appellant requested the vendors to pay a sum of RM1,896.52 to make up the difference between the redemption sum and the amount of RM40,000 to be paid by the respondent/purchaser. The vendors failed to do so. The respondent had paid RM21,223.83 earlier and had to pay, which he did not, a further sum of RM18,776.17 to settle the property's full price of RM80,000.

- G [5] One year later, on 25 February 1999, the appellant wrote to the respondent to discharge himself from acting for the respondent. At the same time, the respondent was owing to the appellant a sum of money for fees and disbursements relating to other matters in which the appellant had been acting for the respondent.

- I [6] The appellant claimed that the sale and purchase agreement was terminated for failure of the vendors to pay the shortfall in the redemption sum. As will be shown later, this does not seem to be so. The vendors also by letter of 27 September 1999 discharged the appellant from acting for them. All documents were

then forwarded to Thevin, Chandran & Wong, the new solicitors appointed by the respondent to act for him in the sale and purchase agreement.

[7] The appellant sought to utilise the amount of RM21,223.83 in the hands of the appellant towards settlement of the fees and disbursements due from the respondent to the appellant. The appellant claimed that the respondent was owing to him a total of RM26,038. This means that even setting off the amount of RM21,223.83, which the appellant claimed, the respondent would still be owing him an amount of RM4,814.17.

[8] The appellant wrote to the Bar Council seeking advice as to whether he had the right to set off the sum held by him on behalf of the respondent towards settlement of monies due to him from the respondent. The Bar Council however replied that the information provided by him was insufficient. The appellant provided some more information to the Bar Council. The Bar Council remained silent and did not respond to him. So, on 14 April 2000 the appellant decided to utilise RM21,223.83 which was in the client's account to set off the fees and disbursement owed by the respondent to him.

Disciplinary Action

[9] On 17 April 2000 the respondent lodged a complaint to the Bar Council alleging that the appellant had misappropriated the funds in the client's account and also had not acted in a professional manner. The Investigating Tribunal dismissed the complaint but the disciplinary committee set up to hear the complaint found the charges against him proven.

[10] The disciplinary committee found the appellant guilty of misconduct under s. 94(3)(d), (n) and (o) of the Act and concluded, pursuant to s. 103C(c) (cited as "103(c)(1)(c)" by the disciplinary committee) that there was sufficient merit in the complaint. Its report to the disciplinary board was as follows:

His failure to pay the money to the newly appointed "stakeholder" and his unilateral and upper-handed mode of settling his bills raised after he chose to discharge himself from acting for the Complainant amounts to professional misconduct. Accordingly, the Disciplinary Committee finds him guilty of misconduct under Section 94(3), (d), (n) and (o), and concludes, pursuant to Section 103(c)(1)(c) that there is sufficient merit in the complaint.

- A In view of the foregoing, the Disciplinary Committee recommends that the Respondent be suspended from practice for a period of six (6) months.

[11] Section 94(3)(d), (n) and (o) reads:

- B For the purpose of this Part, “misconduct” means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes:
- C (d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
- (n) gross disregard of his client’s interests; and
- (o) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.
- D

[12] And s. 103C(c) provides for the making of the following recommendation by the disciplinary committee to the Disciplinary Board:

- E that there is sufficient merit in the complaint and that the advocate and solicitor should be subject to one of the following disciplinary actions:
- F (i) imposition of a fine upon the advocate and solicitor for such sum as the Disciplinary Committee deems just;
- (ii) suspension of the advocate and solicitor concerned from practice for such period as the Disciplinary Committee deems appropriate in the circumstances; or
- G (iii) striking off the Roll of the advocate and solicitor concerned.

[13] The disciplinary board, pursuant to powers conferred under s. 103D of the Legal Profession Act 1976, decided that the appellant be suspended from practice as an advocate and solicitor of the High Court of Malaya for six months from the date of the order, 27 June 2003.

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[14] In respect of the report and recommendation of the disciplinary committee and the order of the disciplinary board, several technical errors were committed.

I

[15] The report and recommendation of the disciplinary committee to the disciplinary board dated 22 January 2003 was not signed by the chairman of the committee. This omission was objected to by the appellant. Another report duly signed by all the members was later sent to the disciplinary board.

A

[16] Subsequently the order issued by the disciplinary board dated 8 July 2003 (more than three years after the complaint by the respondent to the Bar Council) also contained a clerical error. The order stated that the disciplinary board after considering the report of the disciplinary committee made its order on 27 July 2003 (July) when it should have been 27 June 2003 (June). This was subsequently rectified by the disciplinary board by issuing an amended order and explaining that it was a typographical error.

B

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[17] Be that as it may, another error appeared in the rectified order. This time the date of the order was not written in. To correct that mistake another order was issued with the error corrected. Yet another error occurred in this amended order, which by letter dated 29 July 2003 (and received on 31 July 2003) was sent to the appellant. This time the order stated that he was to be suspended for six months effective twenty-one days from the date of the order, which was 8 July 2003. This meant that the twenty-one days had lapsed by the time he received it.

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[18] Needless for me to say, this is a most unhappy state of affairs. The disciplinary board being a body for disciplining lawyers should itself not have committed such negligent acts – occurring not once but repeatedly.

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[19] At the hearing of this appeal, the appellant contended that the first order issued by the board was a nullity because, according to the order, the disciplinary board considered the report of the disciplinary committee on a wrong date. A corrected order again contained other errors.

G

[20] The High Court held that the correction done to the order was in fact only a correction of a clerical error. What is important is that the board had properly considered the report and recommendation of the disciplinary committee. Suriyadi Halim Omar J (as he then was) said in his judgment:

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... There was no prejudice suffered by the appellant, with the contents of the order being in accordance with the Disciplinary Committee's report.

I

- A [21] Shorn of all rhetorics the principal issue before this court is whether the errors committed by the disciplinary board in anyway prejudiced the appellant. The errors were committed after the hearing was completed by the disciplinary committee. At the disciplinary committee hearing there was no complaint by the
- B appellant that he had been prejudiced or that the hearing was unfairly conducted against him. It is clear, when reading the report and recommendation made by the disciplinary committee to the disciplinary board, that the signature of the chairman of the disciplinary committee did not appear on the report. But to me
- C this is pure oversight. The errors appearing on the face of the documents are very obvious and patent. The appellant was not misled in any way by those errors. This oversight could be and was subsequently rectified. This omission could be corrected by getting the chairman of the disciplinary committee to sign it. It is
- D not as if that committee could not make that decision. The report was only a communication from the committee to the board.

- [22] The errors committed by the disciplinary board also cannot however make the orders issued by it void and unenforceable. The
- E errors committed by the board in this present case are also very obvious. Such errors could therefore be corrected.

- [23] The other errors appeared in the order by the disciplinary board. Again what the disciplinary board committed were also clerical errors, which were patent on the face of the order. Firstly,
- F the date written in the order as that on which the disciplinary board considered the appellant's case was later than the actual date. This could not be correct. It is so obvious. The second time, the date of the order did not appear on the order. This must again be a clerical omission.
- G

- [24] If at all, the last order should be made to read as six months effective from twenty-one days after the receipt of the order. The order, according to the appellant, was received on 31 July 2003. The six months must then be calculated from 21 August 2003.
- H These errors in the circumstances of this case cannot make the order a nullity. Had errors being committed during the hearing at the disciplinary committee or the hearing of the disciplinary board, which errors had caused prejudice to the appellant, then this argument that the order became null and void may perhaps be
- I supported.

[25] In my opinion, unless the legislation requires it to be signed by the members, anyone can sign the letter accompanying the report. After all, the order was only declaring the decision of the board. The decision itself was not wrong or even challenged by the appellant – only the way it was conveyed to the appellant. Even the Criminal Procedure Code provides that “... a clerical error may be rectified any time ...” It must therefore be concluded that these errors, being only clerical errors, notwithstanding they are repeatedly committed, but not prejudicial to the appellant, cannot nullify the order.

A

B

[26] I now come to the second issue. The answer to this second issue depends on whether the amount of RM21,223.83 belongs to the respondent/purchaser or does it belong to him for so long as the sale and purchase agreement remains alive, to use the words of Suriyadi, J (as he then was).

C

D

[27] The question that the Court must answer is:

Whether in the circumstances of this case, the Appellant may utilise the sum of RM21,223.83 in the client’s account towards settling the amount due to the Appellant from the Respondent for services rendered by the Appellant to the Respondent not relating to the Sale and Purchase Agreement?

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[28] The appellant in this case was a stakeholder. He was therefore duty bound to hold the sum for the purpose of redemption. It was not available to him for as long as the sale and purchase agreement remained alive. He was to hold it for the benefit of both parties to the sale and purchase agreement, that is the respondent as well as the vendor couple. He had no authority to utilise the sum for payment of his bills.

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[29] The appellant submitted that since he was discharged as a solicitor by the respondent and the vendors, the sale and purchase agreement became terminated. The appellant also admitted at the inquiry that his fees for this sale and purchase transaction had been paid. The file, including all documents relating to the transaction, was delivered to the new solicitors. The basis of the appellant’s argument that he had rights to utilise the deposit by the respondent for settling his bills with the respondent was that he had a lien over the respondent’s money. He denied any misappropriation and in fact claimed RM4,814.17 still due to him. However, Suriyadi J said (as he then was):

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I

- A ... So long as the SPA was still alive, the appellant had a duty to hold it for the purpose of the required redemption, and not utilize that sum for the payment of his bills.
- B [30] I agree that the sale and purchase agreement had not been terminated. And I do not see any purpose in the handing over of the file to the new solicitors if the sale and purchase agreement had been terminated. This is consistent with the finding of the disciplinary committee:
- C 1. [8] In the absence of any written or oral evidence to the contrary, the DC finds that the agreement between the Vendors and the Purchaser had not been terminated at this point in time. This finding is consistent with the fact that both parties had by then retained Messrs. Thevin Chandran and Wong to act for them.
- D [31] The reason why the file was transferred to other solicitors was to continue with the deal.
- E [32] In *Vije & Co v. Co-operative Central Bank Ltd* [1991] 2 CLJ 1403; [1991] 4 CLJ (Rep) 188 VC George J had this to say in respect of monies paid by the purchasers (who were government servants) to the plaintiff, a law firm, for onward payment to the developer:
- F Accordingly even if the money paid in by the loan division to be paid to the developer became, on the instructions of the developer, money to be paid to the defendant and in spite of the metamorphosis continued to be trust money, the beneficiary of the money now being the defendant, the plaintiffs had the right of recourse (in respect of the fees owed by the defendant) by way of, *inter alia*, set-off against the money **standing to the credit of**
- G **the defendant.** 'Set-off' here is not to be limited to a set-off pleaded in a statement of defence but has reference to the right of setting off the amount owed against the amount held. In the context such setting off means the settling of the account between the parties and, in my judgment, can be implemented by drawing on the amount due as was done here. (emphasis added)
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- I [33] The facts in that case were however different. In *Vije & Co. (supra)*, the monies were paid by the government servants who were purchasers of properties from a developer. In that case, monies were paid to the plaintiff's advocate and solicitor's firm. He was to forward these monies to the developer. The developer owed some money to the defendant bank. It was agreed between the developer and the defendant bank that the sum be paid directly to the bank.

[34] How do we compare the facts in *Vije & Co. (supra)* against the facts before us? In the facts before us, the appellant was acting for both the vendors and purchaser. He therefore owed a duty to both parties to ensure that the monies held by him were used for the very purpose for which he was holding them, that is, that they be utilised towards redeeming the property from MOF Inc. As such the following authorities are more relevant to the case before us. These authorities were cited by Hashim Yeop A. Sani SCJ (as he then was) in the case of *Toh Theam Hock v. Kemajuan Perwira Management Corp Sdn Bhd* [1987] 2 CLJ 26; [1987] CLJ (Rep) 400. In that case, what was in dispute was whether the interest that was earned on the deposit placed by the solicitor in the bank pending payment to the vendor belonged to the vendor. Hashim Yeop A. Sani SCJ held that:

Where money is placed in medio in the hands of a third party to await an event as between two other parties the third party receives that property as trustee and that the property and the investments for the time being representing it represent his trust estate. Certainly the money may be paid to the third party as trustee, but equally it may be paid to him as principal on a contractual or quasi-contractual obligation to pay the like sum to one or other of the parties according to the event. It must depend on the intention of the parties, to be derived from all the circumstances, including any written documents, in which capacity the third party receives the money.

[35] Hashim Yeop A. Sani SCJ held that the interest on the deposit did not accrue to the parties because there was nothing in the agreement to indicate that it should be paid to either party. And secondly, such entitlement to the interest was also not consistent with the Solicitors' Accounts Rules 1967. He discussed the meaning of "stakeholding". This is relevant to the present case. He said:

What is in essence stakeholding? The word "stake" is in common parlance used to *apply to any money to be disposed of in accordance with what may happen in future; and whoever is in possession of the money is often described as a stakeholder. The manner in which the money is to be disposed of depends on the terms on which it is held.*

In sale and purchase agreement cases the position is put clearly by Lord Edmund-Davies in *Sorrell v. Finch* who repeated what was said in *Maloney v. Hardy*:

- A The essence of stakeholding in vendor and purchaser cases is that a binding contract of sale has been entered into and the intending purchaser deposits with a third party a sum to be held pending completion; meanwhile the third party holding that deposit may part with it to neither contracting party without the consent of the other ...
- B In any particular case of sale and purchase, *whether a person receiving the deposit is to be considered as an agent for the vendor or for the purchaser or for both as principal or as trustee is a question of law depending on the circumstances of the transaction as a whole.* The learned judge concluded that in this case the *appellant received the deposit as agent for the respondents in a fiduciary capacity and therefore on general principles he would be accountable.*
- C In *Burt v. Claude Cousins & Co. Ltd.* Lord Denning M.R. in his dissenting judgment explained the liability of an estate agent or solicitor receiving a deposit as a stakeholder which statement of the law was accepted by the House of Lords in *Sorrel v. Finch*. He said:
- D If an estate agent or solicitor, being duly authorised in that behalf, receives a deposit “as stakeholder,” *he is under a duty to hold it in medio pending the outcome of a future event. He does not hold it as agent for the vendor, nor as agent for the purchaser. He holds it as trustee for both to await the event:* see *Skinner v. Trustee of Property of Reed* ([1967] 2 All ER 1286 at 1289), per Cross J. Until the event is known, it is his duty to keep it in his own hands; or to put it on deposit at the bank; in which case he is entitled to keep for himself any interest that accrues to it; see *Harington v. Hoggart* ([1830] 1 B. & Ad. 577). If the purchaser should become entitled to the return of his deposit, he must sue the estate agent or solicitor for it: see *Eltham v. Kingsman* ([1818] 1 B. & Ad. 683) and *Hampden v. Walsh* ([1876] 1 QBD 189). He cannot sue the vendor, because the vendor has never received it, or become entitled to receive it.
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- H Pennycuick V.C. in *Potters v. Loppert* at page 661 considered the law in relation to contract deposits. Where money is placed *in medio* in the hands of a third party to await an event as between two other parties the third party receives that property as trustee and that the property and the investments for the time being representing it represent his trust estate. Certainly the money may be paid to the third party as trustee, but equally it may be paid to him as principal on a contractual or quasi-contractual obligation
- I to pay the like sum to one or other of the parties according to

the event. It must depend on the intention of the parties, to be derived from all the circumstances, including any written documents, in which capacity the third party receives the money.

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In the present case no doubt the appellant was retained as solicitor by the respondents during the material period. In the absence of any agreement to the contrary it would be easy to conclude that the appellant would have received the deposits on behalf of the respondents as their agent or trustee. ... (emphasis added)

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[36] So from these it can be concluded that whether the appellant held the money as stakeholder (or trustee) or not depends on the terms of the agreement between him and his clients. We must not forget here that the appellant was acting as stakeholder for both the vendors and purchaser. Both were his clients. It is not as if he was acting only for one party to the transaction. That sum was held by him not just for the benefit of the respondent alone but rather for the vendors as well. He was therefore a trustee for both parties. The money he was holding in the client's account was meant to be paid to MOF Inc. to redeem the property in question. He was holding the monies to await the vendors to pay him the difference and thereafter to pay MOF Inc. to enable the property to be redeemed or if the agreement was later repudiated, he was to refund the money to the respondent. In this case, he was discharged from acting for the vendors and he was required to transfer the file to the new solicitors. He was also terminated by the vendors as their solicitors. The fact that the file was to be transferred to the new solicitors and his appointment to act for the vendors was terminated, does not make the sale and purchase agreement to come to an end. In fact, I agree with the conclusion arrived at by Suriyadi J, that the sale and purchase agreement was still alive. It therefore means that the money that was held in the client's account was still trust money. On the other hand, had the sale and purchase agreement been terminated, it would depend on the terms of the sale and purchase agreement how such sum held in the client's account was to be disposed of. If it was to be refunded to the respondent, and the vendors ceased to be his clients, then perhaps that money may be utilised pursuant to r. 7(a) to settle the debt due to him from the respondent.

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[37] On the contrary, the appellant drew out the sum of RM21,223.83 from his client's account towards settlement of debts due to him from only one of his clients, namely, the respondent.

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- A [38] The appellant also relied on r. 7 of the Solicitors' Account Rules 1990 that monies in client's account could be used for "payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs".

- C [39] The major distinction between just money in the client's account and the money held in trust is that the money held in trust, as explained in the cases above, does not belong to the client. It is to be held by the solicitors for the benefit of other parties as well.

- D [40] In my opinion the more relevant provision is r. 7(b) relating to trust money. Rule 7(a)(v) only provides that the client's money could be used for certain purposes mentioned therein. Rule 7(b) is for payment in execution of the particular trust, in this case payment to the vendor or for the purpose of redeeming the property from MOF Inc.. Rule 17 is also related to use of client's money. What could happen in future to the case before us was that the vendors would pay the balance to make up the redemption sum for payment to MOF Inc..

- F [41] The appellant also contends that until he receives the full amount, he is not deemed to be a stakeholder. But that cannot be so. Once a solicitor holds money in trust for his client or any other party for a purpose, it does not matter whether the amount is sufficient to be utilized for that purpose. The money remains to be in trust.

- G [42] There are many instances where money is held in client's account on behalf of that client alone. It is in these circumstances that the solicitor is permitted to utilize that money towards payment of money due to him from that client.

- H [43] I find that the disciplinary committee and the disciplinary board had not erred in finding that the charges against the appellant were proven. I dismiss the appeal.

- I [44] For the above reasons, the appeal is dismissed but I would make no order as to costs.

[45] As regards punishment to be imposed on the appellant, I am sympathetic with him. After all, he did something to seek the advice of the Bar Council. The Bar Council ignored him. He did what he thought was his right. A

[46] As such, I have no alternative but to order a token suspension. I therefore set aside the order of suspension of six months and substitute it with a suspension of one month. He had already served his suspension from 28 October 2005, until the Federal Court stayed the order on 21 February 2006. His suspension shall therefore be considered to have been served. B C

[47] I make no order as to costs.

[48] My learned brother Hashim bin Dato' Hj. Yusoff, FCJJ, has seen this judgment in draft and expressed his concurrence. D

Abdul Aziz Mohamad FCJ:

[49] The misconduct which the disciplinary committee found the appellant guilty of and for which the disciplinary board, which affirmed and accepted the recommendations of the disciplinary committee, suspended him from practice for six months, involved the use by him of a sum of RM21,223.83 paid into a client account in connection with a sale and purchase agreement ("SPA") dated 8 December 1997 between a married couple, who were government servants, as vendors, and the respondent, as purchaser. The sale was of a landed property with a single-storey terrace house erected on it and registered in the names of the vendors. The vendors had acquired the property with the assistance of government loan for which the property was charged to the government as security. For the sale to be effective it was necessary that the charge be redeemed so that the property would be free to be transferred to the respondent. E F G

[50] The sale price of the property was RM80,000, of which the respondent had paid RM40,000 at the date of the SPA. The respondent had another RM40,000 to pay. As to when he had to pay that balance of the purchase price, this was set out in Section III of the Second Schedule to the SPA, which stipulated that time was of the essence. The date was not a definite date but depended on certain events which I shall not touch upon because the question has not arisen in this appeal and has therefore not been regarded by any party as relevant. Suffice it to say that, according to cl. 3(iii) of the SPA, the completion date H I

- A was to be the date when the vendors received the full purchase price and that, by cl. 5, the vendors authorized their solicitors to utilize the balance of the purchase price for paying the redemption sum due to the government. Although cl. 2(i) designated K.C. Lai & Co. as the vendors' solicitors, this case has proceeded on the
- B basis that it was the appellant, who has been practising in the name of V. Selva & Associates, who was the solicitor acting for the vendors as well as the purchaser in the sale and purchase of the property.
- C [51] On 29 December 1997, the Housing Loans Division of the Treasury, the appropriate department of the government, in response to the appellant's request, wrote to the appellant to inform him of the amount of the redemption sum. Each vendor had taken a loan to jointly acquire the property and separate
- D accounts had been kept by the Division, so that there were two letters, one setting out the redemption sum as regards the husband, and another as regards the wife. The redemption sum was computed by the month. Six months were provided for, January to June 1998. The amount increased from month to
- E month, on account of interest. For example, for January 1998, the amount was RM41,622.68 (RM21,223.83 for the husband plus RM20,398.85 for the wife). For March 1998, the amount was RM41,896.52 (RM21,363.47 for the husband plus RM20,533.05 for the wife). And for June 1998, the amount was RM42,307.28
- F (RM21,572.93 for the husband plus RM20,734.35 for the wife). To redeem the charge the full redemption sum had to be paid, and to redeem the charge by paying the full amount in respect of a particular month, that amount had to be paid before the end of that month. No redemption sum was provided for payment at any
- G time after June 1998.
- H [52] On 7 January 1998 the respondent, who had yet to pay the remaining RM40,000 of the purchase price under the SPA, paid to the appellant a part of it. The sum paid was RM21,223.83, which was the amount of the husband-vendor's part of the redemption sum for the month of January 1998. The appellant, presumably pursuant to cl. 5 of the SPA, treated the payment as being towards the redemption sum, which for January was RM41,622.68, and issued to the respondent a receipt stating that
- I the sum paid was "payment redemption sum for (the husband-vendor)". But since the sum was not sufficient to redeem the charge, it was not paid to the government but was paid into and kept in a client account in respect of the respondent.

[53] With the payment of RM21,223.83, the respondent still had to pay RM18,776.17 to settle the outstanding amount of RM40,000 of the purchase price. The appellant claimed he made many requests for payment of the deficiency, but the respondent failed to pay. Even if the respondent had paid the full RM40,000, that would not have been sufficient to redeem the charge because the redemption sum was more than RM40,000. For March 1998 the redemption sum was RM41,896.52, so that if the charge was to be redeemed in March, a further sum of RM1,896.52 was required, and that would have to be paid by the vendors. So on 26 February 1998 the appellant wrote to the vendors requesting for payment of that amount, but it was not paid.

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[54] So by the end of June 1998 the charge could not be redeemed because the redemption sum, which for June was RM42,307.28, was not available. There was only the sum of RM21,223.83 in the appellant's client account, which was not sufficient for redemption. And there was no further statement of redemption sum from the Housing Loans Division for any month after June 1998.

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[55] Matters stood thus until 25 February 1999, a year after the appellant wrote to the vendors requesting for payment on their part of the sum of RM1,896.52. There is no evidence as to what had happened to the SPA before that date or as to the desires or stand of the vendors or the respondent before that date as regards the redemption of the charge. But on 25 February 1999 the appellant wrote to the respondent to say that he no longer wished to act as his solicitor.

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[56] There is evidence that the respondent retained the services of other solicitors, namely, Thevin Chandran & Wong ("TCW") but there is no specific evidence of the matter or matters for which they were retained. The respondent was, however, to tell the disciplinary committee that he retained TCW "to take over".

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[57] Besides the SPA, the appellant had acted for the respondent in respect of other matters. On 3 August 1999, more than five months after he ceased to act for the respondent, the appellant wrote to TCW giving particulars of the outstanding fees and disbursements due from the respondent to him, which totalled RM34,690, in respect of fourteen matters, thirteen of which, including the SPA, bore file references. The appellant said that "individual bills for all of our files" had been forwarded to the

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A respondent. On 23 September 1999 TCW sent to the appellant payment of RM3,263 for the bills in respect of two files, one of which was the file for the SPA.

B [58] On 27 September 1999 the vendors discharged the appellant as their solicitor for the SPA and consented to his forwarding all relevant papers to TCW.

C [59] On 28 September 1999 the appellant sent to TCW all original documents belonging to the two files in respect of which the appellant had been paid RM3,263. Of the files, there remained eleven in respect of which, according to the appellant, payment was due from the respondent. On 29 September 1999 the appellant wrote to TCW to seek their confirmation whether he could apply the sum of RM21,223.83 that still remained in the client account in respect of the respondent as a set-off against the fees and disbursements owing to the appellant in respect of the eleven files. TCW replied the same day that the respondent did not agree with what the appellant proposed to do. TCW also asked the appellant to let them have a cheque for the sum of RM21,223.83. On 11 October 1999 the appellant wrote to TCW to forward the bills for work done under the eleven files, saying that the total due from the respondent to him was RM26,038 and that he was going to draw the sum of RM21,223.83 from the client account and apply it towards settling the amount of RM26,038, after which there would still be RM4,814.17 due from the respondent to him.

D [60] On 25 October 1999 the appellant wrote to the Bar Council setting out the facts of the matter and requesting for advice as to whether, in view of r. 7(a)(v) of the Solicitors' Account Rules 1990, he would be in breach of the Legal Profession Act 1976 if he applied the sum of RM21,223.83, which was still in the client account, towards satisfying the sum of RM26,038 of the eleven bills, and as to whether that rule could be construed as not requiring taxation of the bills.

H [61] That rule provides that there may be drawn from a client account, in the case of client's money:

I (v) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs;

Rule 2 defines “client’s money” as follows:

“client’s money” means money held [or] received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor or in connection with his practice as a solicitor, agent, bailee, stakeholder or in any other capacity and includes solicitor trust money but does not include money to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm;

[62] It is apparent from the appellant’s letter to the Bar Council dated 25 October 1999 that he regarded his letter dated 11 October 1999 to TCW, mentioned earlier, as satisfying the requirements of r. 7(a)(v) that the bills be delivered to the client and that the client be notified of the intention to apply the money towards or in satisfaction of the costs.

[63] The Bar Council’s Legal Profession Committee, after requesting for certain further specific information about the matter from the appellant, and having been furnished with it, informed the appellant by letter dated 23 December 1999 that “some information is still lacking”, without specifying what it was, and requested to be furnished with the “full facts”, which, as far as the appellant was concerned, had already been furnished. So the appellant abandoned the idea of obtaining the Bar Council’s advice.

[64] The appellant, however, did not straight away draw the sum of RM21,223.83 and apply it towards satisfaction of the costs due to him from the respondent. He waited until six months had elapsed after the delivery of the bills of costs to TCW on 11 October 1999 before doing so. Then on 14 April 2000 he did so. By s. 126(1) of the Legal Profession Act 1976 the respondent had six months from the date of delivery of the bills of costs within which to obtain an order for their taxation, but the respondent did not seek the order.

[65] There is no evidence of whether the respondent succeeded in buying the property. In his letter to the Bar Council dated 25 October 1999, mentioned earlier, the appellant stated his belief that the property had been sold by the vendors in early October 1999 to a different purchaser using the services of “another solicitor”, which it is not clear whether it referred to TCW. The appellant’s counsel, however, informed us from the bar that the purchase

A under the SPA had been completed, but that is not in evidence. The respondent never stated how his position under the SPA was adversely affected by what the appellant had done.

B [66] On 20 June 2000 the respondent wrote a complaint against the appellant to the Complaints Secretariat about the sum of RM21,223.83. Essentially the complaint was that the appellant had “wrongly misappropriated” the sum.

C [67] After a hearing by it, in which the respondent and the appellant gave evidence, the disciplinary committee made its report to the disciplinary board, in which it concluded as follows:

D ... the DC concludes that the money was deposited with the Respondent as ‘stake-holder’. Since money received as ‘stake-holder’ falls within the definition of ‘client’s money’, the money deposited by the Complainant is not ‘Trust Money’ as defined under the Solicitors’ Account Rules 1990. He ought to have paid the money towards redemption of (the husband-vendor’s) charge or when the parties changed solicitors (the S&P Agreement at this point in time not terminated), he ought to have forwarded the sum to the newly appointed solicitors as ‘stakeholder’.

E His failure to pay the money to the newly appointed ‘stakeholder’ and his unilateral and upper-handed mode of settling his bills raised after he chose to discharge himself from acting for the Complainant amounts to professional misconduct. Accordingly, the DC finds him guilty of misconduct under Section 94 (3), (d), (n) and (o), ...

F The disciplinary committee recommended that the appellant be suspended from practice for six months. On 8 July 2003 the disciplinary board ordered the suspension.

G [68] As to the disciplinary committee’s finding that at the point of time when the respondent and the vendors changed solicitors the SPA had not been terminated, it would appear from finding (8) of its findings of fact that it was an inference drawn from the very fact of the change of solicitors.

H [69] The High Court dismissed the appellant’s appeal, holding as follows:

I So long as the SPA was still alive, the appellant had a duty to hold it for the purpose of the required redemption, and not utilize that sum for the payment of his bills. ... He had held the sum of money as a stakeholder for the purpose of redeeming the property

and nothing else. Whether the amount of RM21,223.83 was only partial or full was irrelevant. What was relevant was its purpose. It was thus incumbent upon the appellant to hold on to that sum of money, until there was an express notice or instruction from the parties of the SPA to terminate the agreement. ... Even if any termination of the SPA had taken place it was still incumbent upon the appellant to return that redemption sum to the respondent's new lawyer.

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[70] It will be seen that both the disciplinary committee and the High Court found that the appellant held the sum of RM21,223.83 as stakeholder. As to what he should have done with the money, the High Court differed with the disciplinary committee. In the view of the disciplinary committee, before the parties changed solicitors the appellant ought to have paid the sum to the government towards redemption of the husband-vendor's charge, and after the change of solicitors he ought to have forwarded the money to TCW as "stakeholder", presumably for TCW to redeem the husband-vendor's charge. The High Court, however, did not say that the appellant should have paid the sum to the government to redeem the husband-vendor's charge. It would appear that the High Court accepted the appellant's submission, to which there appears to have been no reply, that there was no such endorsement on the document of title to the property as the husband-vendor's charge, by which I understand that there was only one charge, a joint charge, and not two separate charges, one by the husband and another by the wife. To the High Court, the appellant was to keep holding on to the money until the SPA was terminated, in which event he was to return it to the respondent.

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[71] In the present appeal the stand of the appellant is that the sum of RM21,223.83 still belonged to the respondent and was not "a stakeholder fund or a trust account", and the appellant was not a stakeholder or a trustee in respect of that sum, because it was insufficient to redeem the charge. The appellant's case is that, because the sum was insufficient, the holding of it by him did not qualify as stakeholding according to the following meaning of "stakeholding" as expressed by the Supreme Court in *Lee Yoke Chye v. Toh Theam Hock & Co* [1986] 2 CLJ 423; [1986] CLJ (Rep) 175, following Edmund-Davies LJ in *Maloney v. Hardy* [1970] 216 EG 1582:

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The essence of stakeholding in vendor and purchaser cases is that a binding contract of sale has been entered into and the intending purchaser deposits with a third party a sum to be held pending

- A completion; meanwhile the third party holding that deposit may part with it to neither contracting party without the consent of the other, and if competing demands arise he can interplead ...
- B [72] The respondent's stand in the present appeal is that the appellant held the sum as stakeholder and that the sum was stake money which he was to keep holding until notified otherwise by the parties to the SPA. He relies on the dissenting opinion of Lord Denning MR in *Burt v. Claude Cousins & Co. Ltd.* [1971] 2 QB 426, a case where an estate agent misappropriated a deposit paid to him by a prospective purchaser of a property, and the question was whether the owner of the property was liable to the prospective purchaser for the money. Lord Denning MR held that the owner would only be liable if the estate agent received the deposit as his agent, being duly authorized to do so, but if he received it:
- C 'as stakeholder', he is under a duty to hold it in medio pending the outcome of a future event. He does not hold it as agent for the vendor, nor as agent for the purchaser. He holds it as trustee for both to await the event ... Until the event is known, it is his duty to keep it in his own hands: or to put on deposit at the bank: ... If the purchaser should become entitled to the return of his deposit, he must sue the estate agent or solicitor for it ... He cannot sue the vendor, because the vendor has never received it, or become entitled to receive it.
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- F [73] In my judgment, this was not a case of stakeholding. Even if the appellant had received in full whatever sum was necessary to enable the charge to be redeemed at any time within the months of January to June 1998, he would not have been a stakeholder of that sum. In a stakeholding in vendor and purchaser cases, the sum in question is a stake held by the stakeholder pending the outcome of a future event, and, according as to what the outcome is, the money then becomes available to either the purchaser or the vendor. Stakeholding is a wager situation. In this case the appellant would not have held the redemption sum pending the outcome of a future event. There was no future event to await the outcome of and the sum would not be awaiting any outcome of any future event to be paid to either the vendors or the respondent. The sum was simply and inevitably to be paid to the government. It was not a stake.
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- I [74] That the sum actually received by the appellant was only RM21,223.83 and not sufficient for a redemption sum does not change the situation. It was not a stake. The most that the

appellant could be expected to do was to keep holding it in the client account until it was augmented to become the full redemption sum and then pay the entire sum to the government to redeem the charge. He could not have paid the sum actually received to the government to redeem the charge because it was not sufficient for a redemption sum. Until the end of June 1998 there was in the client account still the sum of RM21,223.83 only, whereas the redemption sum for June was RM42,307.28. June was the last month for which the Housing Loans Division had certified a redemption sum. There is no evidence as to the wishes or stand of the vendors or the respondent after that as regards redemption. In my judgment, the appellant's obligation to treat the sum of RM21,223.83 as meant for redemption of the charge ceased no later than the end of June 1998. After that he was entitled to draw that sum from the client account under r. 7(a)(v), the sum being, in my judgment, always client's money, that is to say the respondent's money, and never stake money.

[75] I would therefore allow the appeal and set aside the order of the disciplinary board, without having to consider the other grounds of appeal concerning the failure of the chairman of the disciplinary committee to sign its report to the disciplinary board and the defects in the orders issued by the disciplinary board. As regards costs, the respondent has been a nominal respondent. His complaint was pursued by the disciplinary board. In the High Court and in this court the solicitors on record as solicitors for the respondent were solicitors appointed by the disciplinary board. I would therefore order that the disciplinary board pay the appellant's costs here and in the High Court.

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